SMOKING AND HEALTH IN THE USA AND CANADA
REPORT NO 2, 1992

I. USA

This month, June, awaits the release of the EPA Report on Passive Smoking (ETS) and the judgment of the US Supreme Court in the case of Cipollone versus Liggett, Lorillard, and Phillip Morris. Both will have a dramatic effect on the future of tobacco, notably cigarettes. But as one reviews the implications of these two events, one is inclined to feel that the ETS decision will be the more important of the two on a global basis. We shall have to wait and see.

1. INDUSTRY

The Tobacco Merchants Association of the United States in conjunction with Tobacco International held the 4th Tobacco International Exhibition/Conference in Raleigh, North Carolina on June 2-4. A news release and souvenir catalogue have been sent to PAS. It was well attended and the papers worthwhile.

The TMA took the opportunity to advertise "Tobacco USA" in two volumes; Volume 1 Federal, Volume 2 State and Local at a cost of $1,395.00!! They are obviously extremely detailed on all aspects of the tobacco industry in the USA. The TMA has become the premier information collecting organization on tobacco in the USA over the past few years. It is a major advocate for tobacco and advertises the importance of the industry extremely strongly. Maybe the industry is pushing this approach by a semi-independent body rather than themselves.

The TMA in conjunction with the Wharton Econometric Forecasting Associates have carried out a study for the period 1975-1990. It shows among other things:

-industry directly or indirectly is responsible for 2.3% of all jobs in the country; these grew from 2.48 to 2.64 million during the period 1985 to 1990.

-tobacco's contribution to GNP was $143.6b in 1990. Specifically for every $1000 worth of goods and services produced by Americans, more than $26.00 was generated by tobacco.

-tax collections, the vast majority from corporate and personal income, totaled $60.4b in 1990, with excise taxes accounting for only 16.6% of this total.

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Perhaps the main message coming out of the conference is the tremendous need to look at tobacco on a Global basis. What happens in one country may affect many others e.g.

-the Chabot judgment on advertising on Canada

-the rolling back of the export tax in Canada and the reduction of taxes in Hong Kong from 200-100%

-new access to markets in Eastern Europe, Commonwealth of Independent States, Asia

The need to preserve a healthy, viable and growing business against the anti-tobacco groups, who equally are working on a global basis, was stressed continuously.

First Quarter Reports

PM stated that its profits more than doubled compared with the same period in 1991, when an accounting change was made. Net earnings were up 19.5%, though those from their Kraft General Foods division was still low (NY Times, April 17 (S), WSJ, March 18). An excellent article on Michael Miles (Fortune, April 6 (S)) reviewed the problems that he has to deal with in the future. The 20% annual earnings growth of the Maxwell era may be difficult to continue e.g. smaller profit margins on price-value cigarettes, less cigarettes sold, lower food revenues and so on.

RJR Nabisco reported a small 1Q loss due to the repurchase of expensive debt. Without that one-time cost, the food and tobacco earnings rose nearly 28 fold (Investor's Business Daily, April 29). "RJR sees its cigarette sales recovering" (WSJ, May 14 (S)) states that with their full price brands, "Winston, Salem and Camel", consumption rose 0.6% compared with an industry 1Q decline of 1.2%. Emphasis has been placed on "Winston" but the increase in "Camel" sales has been due in part to advertising. Some people argue that their sales recovery has been due to giveaways and other retail promotions. RJR sees their cigarette share stabilizing with major growth globally (international earnings up 16% in 1Q) (WSJ, April 29).

American Brands posted record 1Q revenues and operating income and a 2.6% increase in cigarette sales. Gallaher posted a 12.7% decline in cigarette unit sales but operating income was up 5% to a record level and export unit sales jumped 23%. U.S. Tobacco continued their usual trend, up 19% over 1Q 1991. Loews/Lorillard made more modest gains but Universal Leaf was up 8%. Standard Commercial took over W.A. Adams Tobacco Company in Oxford, North Carolina.

Two extremely interesting articles appear to have an impact on policy and sales of the major tobacco companies:

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requested to form a Tobacco Advertising Review Committee to assess whether the media and outdoor ad firm is acting in a socially responsible manner with regard to tobacco and alcohol ads.

Brands

TMA in its Special Report 92-01 of April 2, 1992 (S) reviewed its 17th Annual New Brand Activity for 1991. There were 30 cigarette brand families and 62 line extensions of those brands. Of introductions, 7 cigarette brand families and 17 line extensions were in the price-value sector, defined to include branded generic, sub-generic, low price and extra low price cigarettes. Compared with 1990, cigarette brand family introductions were up from 26 to 30 with line extensions down from 71 to 62.

In 1992 a number of additions have been marketed:

-RJR "Camel Wides" 80 mm and 2 mm wider then conventional king size cigarettes - aimed at Marlboro (samples to SWP)

-"Merit Ultima" low tar, low nicotine, aimed to compete with American "Carlton" and RJR "Now". Heavily advertised (samples to SWP and BAR)

-PM "Virginia Slims Superslims" emitting less smoke from the lit end than conventional cigarettes (samples to SWP)

RJR "Winston Select" tobacco blend superior to normal "Winston" (AdAge, March 16 (S)) (Samples to SWP)

-Lorillard "Style" price value cigarettes for women (Samples to SWP)

-B&W "Savannah Lights" (WSJ, May 13) - slim cigarette for women - test markets Alabama, Florida, Georgia.

For some years, PMI has produced relatively small amounts of low profit black and white generics, like "Best Buy, Gridlock, The Commuter's Cigarette." Basic" was brought to my attention (samples to SWP). From 1990 to 1991, PM produced 9.8 billion of these cigarettes. President PMI, USA, Campbell argues that it helps to increase market share even though profitability is poor. RJR are now going to this (U.S. Distribution Journal, June 15 (S)).

I reviewed the Maxwell Report for 1991 in S&H Report No 1, 1992. Apparently, Tobacco Reporter have now arranged to publish more detailed extracts, see March (pp 18-19) and April (pp 13-22), 1992 issues.

In these reports, it was again noted that much greater emphasis is being placed on price-value cigarettes (25%

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share 1991). The U.S. Distribution Journal, April 15 (S) asks - "Price-value drives cigarette market - but at what cost?" Apparently wholesale gross margins are similar to full-price brands, and the incentive programs offered on many of the p/v brands makes wholesale business more lucrative. On the other hand, p/v brands are not as profitable for vendors as full-price brands. PM had 29.6% and RJR 28.4% of p/v brands in 1991.

Exports

Eastern Europe and The Commonwealth of Independent States (CIS) continue to be an area to which the US domestic companies, notably PM and RJR, are responding. PM is expanding its Cabarrus, NC factory at a cost of $400m to meet the high demand for exports. By 1997 they want to sell 80-100b cigarettes in the former Soviet Union (CIS). They have recently agreed to invest in the Czechoslovak cigarette company, Tabak, beating out a rival RJR offer (N&O, May 21 (S)). This is in addition to similar purchases in other countries already reported. Hungary, who smokes more cigarettes per capita than any other country but Japan is an ideal venue (N&O, May 28). B&W announced a $120m development of the Serbia, Yugoslavian-based Nis Tobacco Company.

Manfred Korner of Germany reviewed the "World's Emerging Trading Blocs - effect on the tobacco industry" at the conference, citing the trade projections of FAO Paper 56 "Tobacco, Supply Demand and Trade Projections 1995 and 2000", 1990. He noted increases up to year 2000 in the Asia-Pacific, Eastern Europe - CIS, and the rest of the world (other than North America and Western Europe). G.Y. Bavannik of Finland discussed "Prospects for Expanded Trade and industrial cooperation between the new Russia Federation and Western Enterprises" outlining the enormous difficulties at this moment.

Ken Howland, Director, Tobacco Cotton and Seeds Division, USDA, FAS, had spoken about the trade prospects to CIS at the Tobacco Associates meeting on march 10 (Tobacco Internatinoal, June 1, pp 28-30). I believe there is an impression among some leaf dealers that such trade will be forthcoming without too much trouble. But in talking to Korner and Barannik, they stated that they would encourage investment in Eastern Europe but certainly not in CIS (their papers sent to FAS).

Smokers in Japan purchased a record $28.3b cigarettes in 1991 up 2% from 1990. It was the third consecutive year of increase. Lark Milds, followed by Kent Mild King size were the best selling imports. Two excellent articles on Japan Tobacco Inc (Tobacco Reporter, April 1992) indicate, however, that import market share gains are slowing (14-15%

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1990). J.T. have copied the marketing techniques of the US companies and are moving to hard packs, which young adult smokers prefer. T. Yamaguchi (of J.T., Inc.) at the conference in "Machinery Automation in the Future" clearly demonstrated how the company was going to change in their manufacturing process (S).

In addition to changing their marketing and manufacturing approaches, J.T. have expanded and diversified into other products, notably pharmaceuticals and agri-business, through biotechnology.

Taiwan is privatising its Tobacco and Wine Monopoly Bureau within three years. Interestingly, this seems to be happening to the Indonesia Kretek Company, Gudang Garam, too. The Taiwan monopoly has been attempting to manufacture its own American-blend cigarette, to compete with imports, but as yet without success (Tobacco Reporter, March 1992). Rampant smuggling of cigarettes into Taiwan has forced B&W to withdraw from that market and they have offered BAT the sales rights of "Kent".

Both Presidential Candidates, Bush and Clinton, support efforts to promote U.S. agricultural products abroad, including tobacco.

One of the best reviews on developing export markets was obviously in "The Search for El Dorado" Economist, May 16th. It showed very clearly the problems associated with tobacco world wide, both for and against.

Advertising

I referred in some detail in S&H Report, No. 1, 1992 (pp 7/8) to the RJR "Joe Camel" advertising. This has continued to be a major discussion point in the press, TV and radio during 1992 to date. AdAge, April 27 (S) reports on a survey showing high recognition of "Camel and Marlboro" advertising by teenagers. The article in JAMA, December 1991, states that such advertising encourages young people to smoke. Secretary of HHS Sullivan and Surgeon General Novello have spoken out against the advertising and promotion practices of the tobacco industry (Washington Times, March 30) and have requested magazines to reject Camel advertising. But magazines have rejected such boycotts because of the First Amendment protection of freedom of speech (WSJ, April 14 (S). Indeed, R.J. James, Chairman of McCann Erickson Worldwide, asks the question, "since when does brand awareness automatically translate into preference and usage?" (AdAge, May 20).

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RJR seem to be winning the battle. A San Francisco judge refused to impose a statewide ban on Joe Camel, the cartoon character used to promote Camel cigarettes. This was in response to a complaint (Mangini versus RJR) which demanded that Joe Camel should be removed from the promotion circuit. The lawsuit cited data from the JAMA articles. One of the authors of the latter, Dr. J.R. DiFranza, has since stated that "none of these studies were designed to show that Camel ads increased smoking among kids". After also reviewing the AdAge, April 27 study, DiFranza agreed that choice is unlikely to be influenced by advertising: "Maybe we are not asking the right question?" RJR consider that DiFranza's study is flawed and that he may have withheld some results (WOT, May 27). The net result of all this fracas is that sales of "Camel" have risen quite markedly!!

Of the top 10 companies advertising in 1991, PM was No. 2 at $1.1b. Nevertheless, this was nearly 8% lower than 1990.

An advertising gimmick by PM much annoyed the Governor of Maryland who had just signed a bill increasing taxes on a carton of cigarettes by $2.00. PM immediately offered a $2.00 rebate on a carton of their cigarettes to offset the increase. It was headlined "Tax Relief" (Washington Post, May 22).

Miscellaneous

Other papers of interest at the conference in relation to the industry (S) were:

(i) "World trends in Smoking Tobacco and RYO", L. Bernth, Denmark. Excellent review.

(ii) "Economies of Scale-Different make/pack combinations for large and small complexes", F. Lockamy, RJR

(iii) "Some aspects of primary processing and tobacco degradation", M. White, GBE Legg - excellent article - he must have been trained at ITL!!

(iv) "Cigarette papers: What will products and services look like in the year 2000", Alain Charet (different speaker). A good general review. Interesting emphasis on environment.

(v) "Polypropylene Cigarette Filter Materials", P.J. Nothels, Kimberly-Clark. My informants tell me that this was produced 2-3 years ago and was not all that well accepted. Again emphasis on environment.

(vi) "Sensing and control of key variables in tobacco processing - what is coming", John Hunt (to be sent shortly) worthwhile

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2. TOBACCO PROGRAMME

The 1991 tobacco trade surplus of $4.8b was 15.4% below that of $5.7b in 1990. This was due to a decrease in the value of cigarette exports ($4.2b 1991) as well as an increase of total tobacco imports to $1.2b. This surplus was the sixth largest contributor to the U.S. trade balance, preceded by airplanes and parts, chemicals, scientific instruments, specialized industrial machines, and corn.

Flue cured acreage for 1992 is about 407,100, 1% higher than 1990. With a normal yield, this would produce 895 million pounds. Because of insufficient quotas to meet production levels in 1991, 50-60 million pounds were carried over on farms. This would therefore again cause an excess of poundage (assuming the 1992 crop is a normal one) for sale in 1993. This carry over always sells well at the beginning of the marketing season. There are also illegal sales going on as well. Is this carry over system going to occur annually? The USDA (Tobacco TS 218, April 1992) predict that growers will market about 890m (actual quota 899m) in 1992.

I noted in S&H Report No. 1, 1992, pp 10/11 that there is considerable concern amongst growers about the increase of flue-cured imports (1991 21% over 1990 and going strong in the first four months of 1992) at a lower price than equivalent US leaf. In part, imports are useful to bring down the leaf costs in generic cigarettes now 25% of the US market. It can be argued that the domestic manufacturers buy poorer leaf and perhaps are emphasizing quantity and lower price to the detriment of quality. Equally they have expanded their manufacturing facilities very efficiently to ensure cheaper costs of manufacture.

The Flue-Cured tobacco Cooperative Stabilization Corporation again highlighted this dilemma at their annual meeting on May 29th. It is understood that growers from the five flue-cured states are discussing the situation to see what can be done to meet the current position and compete with other countries:

-encourage a two-price system like Canada. Whilst theoretically sound, it could lead to severe administrative problems.

-modify the price support program and grading system such that emphasis be placed on grades in demand and maturity (ripe versus unripe)

-markedly increase the quota or reduce the yield average figure now used, plus ensuring no overplantings by growers (very common in some counties) to reduce carry-over levels.

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-decrease the support price, which in 1992 is $1.56 per pound. Yet average prices are 20 cents above this figure. On the other hand, growers wanting more quota pay 25-50 cents a pound for quota, an added cost. Decreasing the support price would have major repercussions on quota owners, who do not grow tobacco, in the short run, but would aid the industry in the long run.

In my view, the domestic manufacturers are really not helping the growers at this time.

Exports of unmanufactured leaf in 1992 are expected to remain at 1991 levels of about 500m pounds (50% of this is flue-cured). I am still extremely concerned over the future of exports by increased mechanization practices, which will encourage mixing of plant positions.

The USDA notes that "for the tenth time in the last 11 years, Japan was the leading buyer of US tobacco in 1991, followed closely by Germany, the leading buyer in 1988!! The United Kingdom, long the major US market, reduced its takings in 1991 and fell from 6th to 9th place among major markets. Sales in the UK have been falling because of declining cigarette consumption and a shift toward purchasing cheaper tobacco elsewhere!!"

It was noted that, as of April 30th, 1992, stabilization inventory was 127 million pounds of the 1986-91 crops. Sales during the first four months of 1992 were only 8.5m as opposed to 55m in the same period in 1992. Is this due to imports? The domestic manufacturers buyout of the 1976-84 crops is almost complete - only 16.1 m pounds or 3%.

Crop 1992

The flue-cured crop, as at the end of May, has been fully transplanted in all belts. Stands are excellent. Greenhouse production of plants is rapidly increasing (c.f. Canada) with 33-35% in North Carolina and 10% in South Carolina (1991 estimates). Temperatures have been very mixed, some warm periods, but often very cool, even up to the end of May. Rainfall is too have been limited. Crop growth is, therefore, behind schedule. It needs some really warm weather. Perhaps one might predict a higher nicotine level than normal!!

Pesticides

I have sent forward notes on the annual Regional Tobacco Growth Regulator Committee meeting (S). Strong emphasis continues to be made on reducing levels of MH residues by the use of improved spraying techniques or by its combination with other chemicals notably Prime Plus. Butralin (Tamex) and Pendimethalin (Pay Off), both

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nitroanilines, together with Razor, continue to be tested as growth regulators but none have been submitted to the EPA for approval on flue-cured tobacco.

An excellent "Situation Update on MH Residues" (S), by the Tobacco Industry Leadership Group, shows that two thirds of growers have residue levels up to 150 ppm (average 60 ppm) but one-third, above 150 ppm, average 280 ppm!! Hence, the overall average for the entire flue-cured crop of 140-147 ppm. Extension emphasis is obviously being placed on the latter group of growers. H.J. Eberhardt of the German Verband emphasized that high MH residues has a negative impact on US tobacco and as a result could cause severe sales difficulties in Europe in the future.

It is noted that Uniroyal and Fair Products have nearly completed their toxicological data for the re-registration of MH by the EPA. No problems have been found. It is hoped to submit all data by December 1992, with the possibility of EPA approval in mid-1993. Both WHO and FAO have checked this data for food crops and found its use acceptable. Part of the Uniroyal data has been sent to PAS.

The Pesticide Residue Research Laboratory submitted its 21st Report at a meeting on May 6 (S). Dr. T.J. Sheets is retiring, but will continue part-time. A great deal of emphasis during 1991/92 has been on sucker control studies too. Residue levels of Prime Plus, Endosulphan, EBDC have been found to be very low on warehouse collected samples. Since many pesticides used on tobacco are being deregistered, every effort is being exerted to encourage companies to register new chemicals. Sample collection for smoke flavor tests is being arranged. The Tobacco Pesticide Committee continues to have a toxicological consultant to review these new chemicals, so that the domestic manufacturers will carry out smoke tests.

At one time, a list of pesticides used on tobacco in all countries was developed (originally with the help of ITL). This has not been updated for three years. It is understood that the Coresta Pesticide Sub-Committee is carrying out a similar project, so further action has been delayed. Many chemicals listed by the EPA as approved for tobacco will drop out, as the re-registration process progresses.

Biotechnology

An interesting article in Discover, March 1992, outlined the program of Biosource Genetics Corporation to produce the components of human hemoglobin as well as an experimental

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AIDS drug called trichosanthin, in mosaic infected tobacco plants.

An excellent review of "Transgenic Crops" in Scientific American June 1992 outlines the methods of plant biotechnology to date, with particular reference to tobacco, such as the incorporation of Bacillus thuringensis.

Genetically altered food is in the news at the moment with the Administration, Secretary of HHS and the FDA approving the production and sale of such products from plants. Those involving meat, poultry, fish or dairy products may need further testing. In particular, a genetically altered tomato, from Calgene, Inc. resists spoilage and therefore can be picked and shipped at a tasty red-ripe stage. It should be on the market within a year (N&O, May 27).

3. LEGISLATION

1. Federal

The Congress is in a relatively quiet period for federal tobacco legislation and it is unlikely that any bill of consequence will be passed until the next congress convenes in 1993.

On the other hand, ASH is trying to make smoking an issue in the 1992 campaigns and contests. They are preparing a Uniform National Survey on smoking Related Issues, and this is being mailed to the major Presidential and Congressional Candidates. They are encouraging their membership to also send this survey to all political candidates and raise the question at any public meeting.

(a) Taxes

S1306 and HR 3698 bills amend the Public Health Service Act to forbid the Secretary of HHS awarding mental and substance abuse health grants to States that do not prohibit tobacco sales to individuals under 18 years of age. They have been passed, and are now in conference. They are appropriation bills supported by TI, and will almost certainly be signed by the President, when presented.

S1944 and HR 3635 bills on "Health Promotion and Disease Prevention Act of 1991" have passed both houses and are still in conference. Waxman has introduced both HR 3698 and 3635 but is very much behind in ensuring conference agreement, prior to approval and resubmission to both houses. The combined bill is likely to be signed, assuming

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no large requirements of money are needed. Other health bills referred to in S&H Report No. 1 1992, page 13 will go nowhere.

Overall therefore, no new tobacco excise taxes are likely.

(b) Advertising

The controversial Kennedy S1088 act will not be brought before the Congress during 1992. Rep. Waxman has not submitted a companion bill in the House.

David Remes of Covington and Burling spoke on "Is Free Speech disappearing" at the TMA Conference (no notes). He spoke on advertising, so I questioned him on the ultimate decision of the future of tobacco advertising. He stated that he did not think that the S1088 bill will pass even in the next Congress. That has always been the view of Covington and Burling. If the Chabot ruling in Canada is upheld, together with the USA, surely the EEC will find difficulty in supporting no tobacco advertising.

(c) Indoor Air Quality

The Rep. Joe Kennedy HR 1066 bill is unlikely to proceed any further in the House in 1992.

The companion bills S1622 and HR 3160 requiring OSHA to issue final safety and health standards on indoor air quality no later than December 31, 1993 had hearings on May 6 (S1622) and April 2/8 (HR 3160). The HR 3160 bill was reported out of the House Education and Labor Committee on June 3rd. Neither will go forward in 1992.

No action has been taking by the White House on the proposal by Secretary of HHS Sullivan to ban smoking in all federal offices.

(d) Product Liability

Both Senators Kasten (R WI) and Rockefeller (D WV) have brought together a bipartisan coalition to ease the product liability crisis. Senate Majority Leader Mitchell (D ME) invoked a cloture and denied a vote in the Senate. In an attempt to overcome this, Kasten added the reform measure as an amendment to a voter registration bill, but it was tabled by a 53-45 vote. Rockefeller did not support this approach and hopes to find another way to raise the matter (Journal of Commerce, May 18). Unfortunately the Senate Judiciary Committee does not favor a change even though the Senate Commerce Committee and VP Quayle's Committee on

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Competitiveness do. This issue has been discussed in Congress for more than a decade, so it is difficult to foresee the final outcome.

Miscellaneous

The Coalition on Smoking and Health wishes to place tobacco under the control of the Food and Drug Administration. Commissioner Kessler states that they do not have the resources to even efficiently control what they do at present (N&O, March 29 (S). Nevertheless no further action is likely on the Bingaman S2278/Synor HR 4350 FDA control bills in the present congress.

Newly proposed bills by Rep. Santorum (R PA) to eliminate tobacco price supports and the No Net Cost Tobacco Fund and Sen. Cranston (D CA) on the elimination of cigarette supplies to patients of the Veteran Administration will go nowhere in 1992.

B. STATE

(a) Taxes

34 states and the District of Columbia proposed increases in 1992. Only 3 states and DC (now 50 per pack, the highest in the USA, Minnesota 48c) passed. After the election early November, some other states may increase taxes. There are possibly 5 states which will have tax increases as initiatives to be voted on in November (tend to be health-related). Earmarking tobacco taxes is now in place in 40 states (various uses: highways Massachusetts; parks Texas; health 10 states). Five localities in Virginia wished to increase their own taxes, but this was vetoed by the Governor. Such taxes have been a state prerogative (plus Federal).

(b) Smoking restrictions and bans

32 states introduced bills to ban or restrict smoking in 1992. Six have passed to date. While there is much greater activity in localities to take such action, the State bills usually have stronger wording and indeed 7 states have preempted the action of localities. The TI are encouraging the latter process.

One can anticipate greater activity in this area if the EPA Passive Smoking recommendations are accepted by OSHA, late 1992, in any regulations governing indoor air quality.

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(c) Employment Discrimination

Privacy bills were proposed in 27 states and 6 have passed. There are now 25 states with such laws in place. These have tended to go hand in hand with action on smoking restrictions. The TI are encouraging the passing of privacy bills.

(d) Advertising bans and restrictions

Action by states has been very limited. Alaska and Illinois have restrictions at point of sale and Texas, Utah and now Kentucky on position of billboards, relative to schools. Bills were filed in 18 states and defeated to date in 10.

(e) Indoor Air Quality

Proposed legislation in nine states is very broad in nature. Five states have defeated such bills, four are pending. It is doubtful if any will pass. Any action will depend on the Federal bills now in Congress.

(f) Minimum sales age

The TI are strongly supporting the sale of tobacco products only to people over 18. 45 states and the District of Columbia have now passed this provision and it is likely that the remainder will follow in view of Federal Bills S1306, HR 3698 (see above).

(g) Packaging

A packaging reduction model has been developed by the Coalition of Northeastern Governors (CONEG) to set standards for packaging waste reduction. New York is reviewing a bill to require packaging materials to be "environmentally sound" and meet recycling standards starting in 1996. Georgia and Maryland have passed CONEG measures to limit heavy metals in packaging. Bills have been proposed in 20 states along similar lines, 10 passed, 10 pending. Massachusetts may have voting initiative in the November election.

As noted in WSJ May 18, "Green Product Sales Seem to be Wilting" in a wide range of businesses. Indeed comprehensive green seals of approval for specific products by Earth Day April 22 have not appeared yet either (AdAge, April 20, 1992).

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(h) Fire Safe Cigarettes

This subject continues to be discussed in five states. Massachusetts and Minnesota have defeated any such action. Obviously it must await Federal proposals.

(i) California Proposition 99

This initiative adopted four years ago to combat tobacco, by increasing cigarette taxes by 25 cents a pack was recently challenged by Governor Wilson. Most of the $550m generated each year supports medical services for the poor. 5% goes to tobacco related research and 20% to educational programs to discourage smoking. Because of a fiscal crisis, Governor Wilson wished to divert $16m of the anti-tobacco ad campaign. This was overruled by a judge in Sacramento, who quoted a state study showing that the ads contributed to a 17% decline in the number of smokers over the past three years (Newsweek, April 8 (S), Washington Times, April 27).

(j) Miscellaneous

Little or no action continues to occur in states dealing with cigarette ingredients disclosure, tobacco on death certificates, stock divestment, toxic chemical warning legislation (similar to California Proposition 65).

4. LITIGATION

(a) Cipollone versus Liggett, PM, Lorillard

Walter Cofer (Shook, Hardy and Bacon) gave a historical review of this case at the conference (no written paper).

Judgement, as stated on page 1, is expected any day. If no judgement is made (very, very unlikely) the case will be set for reargument.

On June 1, the Supreme Court ruled that states cannot regulate airline advertising to protect consumers from being misled about discount air fares and their availability. Under the federal law that deregulated the airline industry in 1978 only the federal government has the authority to police deceptive advertising by airlines.

This ruling is considered to be extremely analogous to that of the Cipollone case and the 1965 Federal Warning Act on cigarettes, which started in 1966. New Jersey has challenged this act, indicating that states do have the right to place their wording on cigarettes. As has been stated before, the confusion on commerce (c.f. EEC

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countries) would be tremendous, if this was allowed. Tobacco is not the only product, which would have this problem.

Cofer clearly stated that if the case did uphold the industry, other aspects could still be challenged - risk/utility, defective product, insufficient failure to warn, lack of information prior to 1966. The decision, whether to continue this case and others will obviously depend on the wording of the judgement.

(b) LeJeune versus American et al

An original asbestos case. This was recently dismissed by the plaintiff.

(c) Gilboy versus American, RJR, Lorillard

The Lejeune case was originally decided based on the Gilboy case, whose ruling was overturned by the Louisiana Supreme Court. As a result, further discovery is proceeding and there is a possibility for a trial to be set in 1993. There was an extremely interesting article in Washington Post, March 17 on this case. An Ohio State University professor argues that federally mandated health warnings have not served effective notice of the hazards of smoking. The Louisiana Supreme Court concurred with this finding.

(d) Hulin versus American

His attorney is the same as that of Gilboy, together with another case in Louisiana, Woodruff versus RJR, where discovery is proceeding too. He is adding asbestos to that of the Woodruff case, which also argues dangerous design in the cigarette. It is not known how the attorney will proceed in these cases.

(e) Horton Versus American/Wilkes versus American

American petitioned the Mississippi Supreme Court for consolidation of the cases since the Judge made different decisions on risk/utility issues. Subsequently it has been decided that the Wilkes case will await the decision of the Cipollone case. All briefs for Horton were submitted on May 26. Decision on a further trial is awaited.

(f) Kupper versus RJR, TI, local cigarette dealer

Illinois. Lung cancer. The plaintiffs have submitted their briefs three times, with modifications.

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(g) Haines versus TI, RJR, Liggett, Lorillard, PM

Judge Sorokin ordered 15,000 documents from the Council for Tobacco Research be released. The Third U.S. Circuit Court of Appeals agreed to review this order.

(h) Zwillman versus Brooke Group (formerly Liggett)

Discovery on this case is stayed until the judgement on the Cipollone case is received.

(i) Ferriozzi versus Lorillard, Hollingsworth and Vose

Micronite filter. Ferriozzi has dropped charges. A similar case in Maryland, Lesnick versus Lorillard with five others in Delaware, Chicago, Philadelphia are being continued. Basically the fundamental issue, dealing with the filter itself, has yet to be tried. Cofer, who has been associated with these cases, states that one case will go to trial probably early 1993.

(j) Environmental Tobacco Smoke

Broin et al versus PM et al took a major turn on May 19. The court refused to certify her action as a class action suit on behalf of 60,000 flight attendants. This is very important. It will be appealed. However, about 30 flight attendants are continuing their case relating to ETS separately.

J.A. Caron vs E. Silvia on February 14th the Commonwealth of Massachusetts Commission of Discrimination dismissed a complaint by a former municipal employee alleging handicap discrimination based on her sensitivity to ETS. They found that she produced no evidence of smoke allergy or suffered from illnesses, cancer, asthma, emphysema or heart disease due to her exposure. The 9th Circuit Court of Appeals reversed an earlier action allowing a prisoner's 8th Amendment claims for ETS exposure to proceed.

There will continue to be ETS cases particularly if the EPA states that it is a Class A carcinogen.

(k) Liggett versus Brown and Williamson

The 4th US Circuit Court of Appeals affirmed a North Carolina Federal Judge's August 1990 reversal of a $148.9m jury award obtained by Liggett against B&W on charges of predatory pricing during the early 1980's when generic cigarettes were first introduced. The pricing policies of B&W, while perhaps intended to injure Liggett could not be found to be predatory.

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5. HEALTH

(a) General

A fairly detailed survey of cigarette brand preferences of adult and teenage smokers in the USA for 1989 and in 10 US communities 1988 and 1990 was published in JAMA, April 8 (S). These are based on Teenage Attitudes and Practices Surveys (TAPS) and Community Intervention Trial for Smoking Cessation (COMMIT) evaluations. Both surveys showed that at least 84% of adolescent smokers smoked Marlboro, Newport or Camel, the most heavily advertised brands in the USA in 1990.

The Centers for Disease Control found that the share of the population smoking declined at a rate of 1.1% from 1987-1990, compared with 0.5% 1965-1985. They cited 25.5% of the population smoking in 1990 but in a previous 44 state survey (S&H Report No. 1, 1992, page 21) they quoted 23%. A goal of 15% by 2000 is now projected (WSJ, May 22)

The US press was quick to quote the Peto article in Lancet, May 23, on the projected future deaths from smoking in the industrialized nations (N&O, May 22 (S), Washington Post, May 22).

An interesting historical review in JNCI, January 15, 1992 (S) showed that the US Surgeon-Generals have spoken out publicly during the past 30-40 years against smoking and the present one, Atonia Novello is following in their footsteps, together with being an outspoken proponent of women's health issues.

Former Secretary of HEW Califano (1977-79), an ardent anti-smoker, is, with the help of H. Kleber (former deputy director of the Office of National Drug Control) setting up a new, independent substance-abuse policy center in New York (JNIH Research, May 1992).

The 1992 Surgeon-General's Report "Smoking and Health in the Americas" released on March 12 dealt with the problems of smoking in Latin America and the Caribbean (NY Times, March 13). This was the first report to discuss smoking outside the USA.

L.S. Zahn wrote a report of a meeting in Hawaii November 1-2, 1991 on nitroso compounds (S). The American Health Foundation continues to work on this problem. They state that exposure to TSNA's are likely causes of esophageal cancer and causally related to pancreatic and stomach cancer and brain tumors.

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The American Academy of Otolaryngology has mapped by state smokeless tobacco use for males, 16 years and above in age. While this group continues to warn against its use (Washington Post, March 10 and April 2) an interesting paper by D. Siegel at al (AJPH, March 1992) shows that smokeless tobacco use has at most a modest effect on cardiovascular risk factors in young physically fit men. Nevertheless G.N. Conolly in "Snuffing Tobacco out of Sport (AJPH, March 1992) states that baseball players are much at risk of developing oral cancer and other mouth disorders. The need to quit is therefore essential.

(b) Cancer

The first data establishing an epidemiological link between smoking and lung cancer was published in JAMA, May 1950, by Wynder. This paper was given little support at the time. It was reprinted in JNIH Research, May 1992 (S) with up to date comments on its subsequent importance. Indeed, it was not until the S-G report of 1953 that its conclusion was accepted.

Wynder in an editorial in JNCI, May 6, comments on methods of reducing smoking use. He refers to the HHS/NCI Smoking and Tobacco Control Monograph 1 (S) entitled "Strategies to control tobacco use in the US: a blueprint for public health action in the 1990's" How these ends can be delineated is outlined in a very detailed manner.

S.S. Epstein continues to be very critical of the achievements of the cancer establishment. The NCI promised in 1986 that annual cancer mortality rates would be halved by 2000. They belatedly admit that cancer rates are increasing sharply instead. The NCI and ACS "have largely attributed rising rates to smoking and dietary fat, while discounting or ignoring industrial carcinogens in air, food, water and the workplace. Prevention studies and initiatives are only allotted 5% of the $1.8 billion NCI budget. Millions have died from what should be a preventable disease" (Washington Post, March 10). Needless to say, there was a strong outburst against him.

L.S. Zahn reported on the World Conference on Lung Cancer held in Melbourne Nov 11-14, 1991 (S). Since Nigel Gray, expert on smoking and lung cancer, was in his hometown, emphasis was placed on this issue. There appeared to be no major new or different data presented.

Interestingly, Oscar Auerbach and Lawrence Garfinkel veterans of the lung cancer problem stated in Family Practice, March 1, that current anti-smoking trends have

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altered the pattern of lung cancer incidence, with tumors unrelated to smoking increasing as smoking-related tumors decline.

(c) Nicotine Patches

Nicotine patches continue to be widely advertised and written about. Ciba-Geigy, Marion Merrell Dow, and American Cynamid have relentlessly bombarded smokers such that there is now a runaway demand and pharmacies are turning away potential customers. All three companies have resorted to rationing and two have reduced advertising. As of April 24, Ciba-Geigy-Habitrol had 60% of the market, Dow-Nicoderm 27%, Cynamid-Prostep 13% (WSJ, May 22 (D)) Predictions of a $1 billion market by 1995 have been made (AdAge, March 23).

Both the NY Times, April 8 and Washington Post, May 12 reviewed the effectiveness of Nicotine patches in giving up smoking in their health magazines. A similar article in US News and World Report, May 4 (S) also indicates that they are not a panacea and smokers must really want to give up, if they are to be effective.

The consumer group, Public Citizen, argues that their "advertisements create the impression that using the patch alone is enough to stop smoking. Studies have only shown the patch works when it is used as part of a comprehensive treatment plan". This group is urging the FDA to require prominent warning labels, requiring the need of counseling to help overcome psychological addiction (WSJ, May 14).

6. FIRE SAFE CIGARETTES

I have sent forward to PAS minutes of the TAG meetings on October 31, 1991 and January 24, 1992, approved at their April 29 meeting. At a meeting in late March, some degree of conflict between NIST and the Tobacco Industry was resolved, but CPSC will now chair the meetings. NIST drafted a general report on proceedings to date. This will be finalized by CPSC, which received it on June 3, and will be sent to Congress by the end of July. It will virtually state that the program is proceeding satisfactorily.

I refer to the January 24, 1992 minutes, Page 2. Hoebel, CPSC, wished to convene a panel of experts to determine the health benefits of developing fire-safe cigarettes. Five people knowledgeable in Smoking and Health (including Dietrich Hoffman, AHF) will meet on June 16 and subsequently for two months, to determine what kind of biological testing is necessary before the industry proceeds with the

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development of fire-safe cigarettes. The industry considers that a balance must be made between saving a few lives in fires versus the increase of biological consequences (fire versus health). It will not deal with consumer acceptability of such cigarettes, which is considered to be an industry problem.

Page 2/3 Gann (NIST) continues to state that a simple primary test is what is wanted and most desirable. If not, a secondary test will meet the interests of legislation. The industry is adamantly opposed to this concept. Air flow (dependent on packing density and paper permeability) and fabric choice are the two key issues. The industry would like to see at least 2-3 levels of air flow and 2-3 fabrics, to simulate the conditions of the real world. Leaf blend is considered to be of comparatively minor importance.

Page 5 - Ignition modeling of a cigarette is very difficult and modeling of a combustible substance even more so. The industry does not feel that this work will achieve very much.

Page 5/6 - NIST, CPSC, and PM will start a preliminary round-robin testing, shortly, mainly to check out the logistics of the operation. It is proposed to set up larger round-robin testing with 5 tobacco industry labs and 5-6 non-industry labs in October 1992.

Page 1/6 - Data collection for the fire-incident study will be completed by the end of 1992. All the industry members have, in confidence, given the CPSC the construction of all their cigarettes. They consider that the fire data must be correlated with demographics. Thus, it is known that many smokers in the inner cities are low income and smoke menthol cigarettes. Older age smokers use non-filter cigarettes. Thus, when the data is complete, it is hoped to show, what type of cigarettes occurred at specific fires and their locations.

The Coresta sub-committee dealing with their fire-safe program met in Washington in early May. They apparently set up a collaborative study for different fabrics and variable air-flows, in an attempt to reduce lab-to-lab variation in results. The US industry is concerned that the Coresta program is moving slowly but accept that this may be due to their members concentrating efforts on their own domestic programs.

The TAG program is scheduled to complete its research by August 1993. The CPSC will recommend to Congress, whether fire-safe cigarettes are feasible or not. As stated in S&H

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Report No.1, 1992, page 25, the tobacco industry is gearing itself up for possible regulation and could start legal action to delay implementation. The next meeting of the TAG group is on June 15, 1992.

Finally, a lawsuit has been lodged in Boston, Massachusetts (Kearney versus PM) for the loss of her daughter, Maureen O'Neill, and her three grandchildren in a fire caused by her husband's cigarette. He was drunk at the time. The plaintiffs will concentrate on the issue of additives and other manufacturing techniques that cigarette makers use to ensure that cigarettes will stay lit, even if they are not being smoked. This is considered to be a very important case and PM are being particularly silent about it (WSJ, May 13 (S)).

7. ENVIRONMENT

Regulations governing the 1990 Clean Air Act have come under tremendous scrutiny by the President recently and a number of major concessions have been made by him, as a result of intervention by V.P. Quayle's Council on Competitiveness e.g. emissions, logging (in the NW) use of wetlands. Equally, changes have been made in policy at the Earth Summit on global warming (USA Today, May 18).

The argument is that the value of environmental regulations must be weighed against their economic impact.

The Indoor Air Act, not yet passed, is now equally under tremendous review by all parties and will obviously not pass in the current Congress:

-the Office of Management and Budget has launched a new review policy, that could seriously impair indoor air regulations (Indoor Air Review, May 1992). "The theory behind the policy is that more regulation actually increases workers health risks. The logical solution is to decrease regulation in order to save lives." Future EPA recommendations, therefore, may undergo OMB review under a risk-risk analysis that suggests rules that would link regulation costs to numbers of deaths. (Inside EPA, May 15, 1992).

-it is noted that "risk assessment is rising to the top of the National Agenda" (Indoor Air Review, May 1992). Rep. Dingell, Chairman of the House Energy Committee has developed a forum, a Committee on Indoor Air Quality (CIAQ), which brings together the regulating bodies OSHA, EPA, DOE (Department of Energy) to discuss Indoor Air Regulations (Indoor Air Review, May 1992).

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-it has been reported (Indoor Air Review, March 1992) that the business and medical community have proposed a "prudent and realistic approach" to indoor air quality.

-an independent body of noted scientists reviewed the performance of the EPA (1991/92) and the findings were reported in "Safeguarding the future: Credible Science, Credible Decisions". These findings were very critical of the EPA and cited their poor performance on such items as dioxin, lead, radon, nitrogen oxides, noise, toxic chemical emissions (Science News, April 11).

-EPA's own IAQ committees have been reviewing their own policies during the past few months.

It is, therefore, difficult to keep up with all the discussions going on. But the bottom line would appear to be the availability of money for the implementation of such regulations, and the return on investment as it relates to human health. The Washington Post, March 26, states that the US is now spending $115 billion a year on environmental protection. Is it getting its money's worth?

The need to take a more holistic and enlightened approach towards environmental/occupational health and risk assessment is considered highly desirable.

(5) Environmental Tobacco Smoke

The long awaited EPA report on Passive Smoke is still awaited. There was a study published mid-May on mothers who smoke greatly increasing their children's risk of developing asthma (5). This was thought perhaps to be a prelude to the report being published. Also on May 22, the EPA in-house reviewed the draft to see whether it should be released. Still no word.

Olaveen Ely of Covington and Burling reviewed the "Legal and regulatory status of ETS" at the TMA Conference and noted, he outlined the history of its development, much of which we know. The new draft has been expanded to include areas which the SAB suggested and some of their mortality estimates are more balanced and conservative. The report will again be reviewed by the SAB before final publishing.

If the report carries a Class A carcinogen notation, it will obviously get considerable public attention, claimed risk will be used on a legal basis, and local jurisdictions will use the report to impose further smoking restrictions. One can foresee its application on a global basis.

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